

COUNTRY ARCH CARE CENTER
Employer-Petitioner

and

CASE 22-RM-746

**DISTRICT 6 INTERNATIONAL UNION
OF INDUSTRIAL SERVICE, TRANSPORT
AND HEALTH EMPLOYEES**
Union

R.D. #0003-06

Pittstown, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

AMENDED DECISION AND ORDER

A. INTRODUCTION:

A Decision and Direction of Election issued in this matter on March 7, 2006 (referred to herein as the March 7th Decision), wherein, *inter alia*, I concluded that despite the fact that the petition was not timely when filed, it was appropriate to direct an election under the Board's premature filing analysis. Thereafter, the Union filed a Request for Review of the Decision wherein it contended that the appropriate analysis regarding the timeliness issue is the "insulated period" rule which requires petitioners

to have their petitions on file at least 91 days before the contract's termination date.¹ Having duly considered the matter, I am *sua sponte* treating the above noted portion of the Union's Request for Review as a motion for reconsideration. Accordingly, this Amended Decision and Order does not modify any of the findings contained in the March 7th Decision with respect to the contract bar issued described therein. This Amended Decision will only deal with the timeliness of the petition.

B. TIMELINESS OF PETITION:

As described in the March 7, 2006 Decision, the Employer and the Union were parties to a collective bargaining agreement which was effective from August 3, 2001 through August 31, 2004. The petition was filed by the Employer on June 29, 2004; clearly during the insulated period. Thus, the petition was untimely when filed.² In this regard, I note that the collective bargaining agreement was effective from August 3, 2001 through August 31, 2004, a period in excess of three years. The Board has held that a contract having a fixed term of more than three years operates as a bar for as much of its term as does not exceed three years. *General Cable Corp.*, 175 NLRB 1035 (1969). The three year period during which a contract is operative as a bar runs from its effective date. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959).

The Board established in *Deluxe Metal Furniture Company*, 121 NLRB 995, 1000 (1958) and reaffirmed in *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962) an insulated period immediately preceding the expiration date of an existing

¹ The insulated period in a health care case, as here, is 90 days prior to the expiration of the collective bargaining agreement. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

² In health care cases as here, a petition is timely filed if it is filed not more than 120 days nor less than 90 days prior to the terminal date of the contract or after the contract's termination date. *Trinity Lutheran Hospital*, above.

collective bargaining agreement and held that a petition filed during that period would be dismissed as untimely. In *Central Supply Company of Virginia, Inc.*, 217 NLRB 642, 643 (1975), the Board further held that even where the collective bargaining agreement expired thereafter, as here, without a new agreement being reached during the insulated period, the petition's untimeliness when filed is not rendered moot in such a circumstance.

The insulated period was adopted to afford parties to an expiring contract an opportunity to negotiate and execute a new collective bargaining agreement without the disrupting effect of rival petitions. *Crompton Co.*, 260 NLRB 417, 418 (1982). An insulated period applies to every kind of representation petition, including employer petitions, as here. *Nelson Name Plate Co.*, 122 NLRB 467 (1959).

In *Electric Boat Division, General Dynamics Corp.*, 158 NLRB 956 (1966), the Board explained the operative effect of the insulated period rule where, as here: 1) a hearing was conducted on an otherwise untimely petition and 2) the evidence adduced at the hearing disclosed no substantial basis for questioning the validity of the contract as a bar at the time of filing. In such a case, the Board held:

The mere fact, however, that a hearing has been held on a petition is not in itself sufficient to warrant the direction of an election on the basis of a petition which is otherwise untimely because it is filed during the ...insulated period. Rather as the *National Brassiere* [122 NLRB 965] case clearly implies, such a petition must still be dismissed unless the record made at such hearing establishes that the existing contract is in fact no bar for other reasons, and such dismissal is required, whether or not the issue of timeliness is specifically raised, when, as herein, the existing contract is adduced in evidence; nor is the necessity for dismissal in these circumstances obviated by the fact that the hearing was not held until after the expiration date of such contract.³

³ *Stewart Die Casting*, 123 NLRB 447, 449 (1959).

C. CONCLUSION AND ORDER:

Based upon the above and the record as whole, I find that the petition filed on June 29, 2004, is untimely as it was filed during the insulated period of the then existing collective bargaining agreement in effect between the Employer and the Union. Accordingly:

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

D. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Amended Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by April 25, 2006.

Signed at Newark, New Jersey this 11th day of April 2006.

/s/Gary T. Kendellen

Gary T. Kendellen, Regional Director
NLRB Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102